IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05/04/2004

Coram

The Hon'ble Mr. Justice S.SARDAR ZACKRIA HUSSAIN

Civil Revision Petition No.2280 of 1998

1.George Thomas.
2.Arokianathan.
3.Edwin.
4.Tmt.Jeslee.
5.Mrs.Rita.
6.Mrs.Flora.
7.Mrs.Asuntha Mary.
8.Mrs.Salina Mary.
9.Fathima. ... Petitioners.

-Vs-

1.T.Selvapathy.
2.Dhoras. ... Respondents.

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 against the judgement and decree dated 17.3.1998 and made in R.C.A.No.924 of 1994 on the file of the Rent Control Appellate Authority (VIII Judge, Small Causes Court), Madras, reversing the order and decretal order dated 31.8.1994 passed in R.C.O.P.No.2877 of 1992 on the file of the Rent Controller (XII Judge, Small Causes Court), Madras.

!For petitioners : Mr.A.Muthukumar for Mrs.K.M. Nalinishree

^For respondents : Mr.Robert Chelliah for R1

:O R D E R

The revision petitioners are the unsuccessful landlords before the Rent Control Appellate Authority.

2. The revision petitioners along with S.Rosemary alias Vasuki and the second respondent herein filed the Rent Control Original Petition seeking eviction of the first respondent herein from the petition residential premises, viz., thatched hut bearing door No.3, Narayana Maistry First Street (now Second Street), Villivakkam, Madras-49, under Section 10(2)(i), 10(3)(a)(i) and 10(2)(vii) of the Tamil Nadu Buildings (Lease and Rent Control Act, 1960 (hereinafter referred to as "the Act") on the ground of wilful

default in payment of rent, that the petition residential premises is required bona fide for own use and occupation and on the ground of denial of title.

3. It is stated in the Rent Control Original Petition that the revision petitioners and two others are the owners of the property having inherited the same from late C.Thomas alias C.Kothandan, the husband of the first petitioner in the Rent Control Original Petition, viz., S.Rosemary alias Vasuki and the father of the petitioners 2 to 11 in the Rent Control Original Petition. The petition premises, which is a hut, constructed by the said C.Thomas alias C.Kothandan was let out to the first respondent herein and on his death intestate on 9.4.1988, the revision petitioners and two others succeeded to the petition property. The first respondent herein was in arrears of rent for two months, viz., from February, 1988 at the time of the death of C.Thomas alias C.Kothandan, and the first respondent herein failed to pay the rent wilfully, despite the demand made by the revision petitioners and two others even after issuing notice dated 11.9.1992. In the reply notice, the first respondent herein denied the title of the revision petitioners and two others. The petition premises is also required for own use and occupation since the place where the revision petitioners and two others are residing is not sufficient. The revision petitioners and two others have claimed that the first respondent herein has committed default in payment of rent wilfully from February, 1988 till September, 1992 to the tune of Rs.4,050/- at the rate of Rs.70/- per month. The first respondent herein is also liable for eviction on the ground of denial of title of the petition premises to the revision petitioners and two others.

4. The Rent Control Original Petition was opposed in the counter denying the relationship of landlords and tenant between the revision petitioners and two others and the first respondent herein. It is further stated that it is only the first respondent herein who constructed the superstructure on his own plot. There was no necessity for the first respondent herein to pay rent in respect of the premises owned by him and therefore no default much-less wilful default committed in payment of rent as claimed by the revision petitioners and two others.

5. Before the Rent Controller, the third petitioner in the Rent Control Original Petition was examined as P.W.1 and Exs.P-1 to P-14 were marked on the side of the revision petitioners and the first respondent herein examined himself as R.W.1 and Ex.R-1 was marked on the side of the first respondent herein. The learned Rent Controller considering such evidence let in on either side ordered eviction on all the three grounds, viz., on the ground of wilful default in payment of rent as claimed, that the petition residential premises is required bona fide for own use and occupation by the revision petitioners and two others and that the denial of title of the revision petitioners and two others to the petition premises by the first respondent herein is without bona fide.

6. The first respondent herein filed R.C.A.No.924 of 1994 and during the pendency of the said appeal, the revision petitioners and two others filed M.P.No.419 of 1997 under section 11(4) of the Act and the learned Rent Control Appellate Authority allowed the said petition on 18.9.1997 that inasmuch as

the first respondent herein denied the title, it is just and proper to order for deposit of the arrears of rent in the Court at the rate of Rs.75/- per month from February, 1988 to 31.8.1997 (115 months) totalling to Rs.8,625/- on or before 4.1 0.1997, failing which the petition will be ordered stopping all further proceedings. The order was challenged in this Court in C.R.P. No.3405 of 1997 and this Court allowed the above revision and directed the learned Rent Control Appellate Authority to dispose the R.C.A.No.924 of 1994 afresh within 4 weeks from the date of receipt of the order of this Court dated 29.1.1998. It appears, the first respondent herein, who filed the said Civil Revision Petition, paid Rs.8,925/- on 29.1.1998 and the same has been acknowledged by the learned counsel for the respondents in the said C.R.P.No.3405 of 1997, viz., the revision petitioners herein. The learned Rent Control Appellate Authority after such direction of this Court in the said C.R.P.No.3405 of 199 7, allowed the R.C.A.No.924 of 1994 filed by the first respondent herein that the denial of title of the revision petitioners and two others by the first respondent herein is bona fide and as such the requirement of the petition premises for own use and occupation is without bona fide and in the said circumstances the first respondent herein has not committed wilful default in payment of rent as claimed. The learned Rent Control Appellate Authority also allowed M.P.Nos.84, 8 5 and 127 of 1998 filed by the first respondent herein to receive additional documents in the appeal and marked the documents filed along with the said petitions as Exs.R-2 to R-4. The judgment of the learned Rent Control Appellate Authority is under challenge in this Civil Revision Petition.

7. The revision petitioners filed C.M.P.No.9773 of 2001 to receive four documents as additional evidence, viz., the xerox copy of plaint in O.S.No.6832 of 1994 on the file of the II Assistant Judge, City Civil Court, Madras, filed on 6.9.1994 by the first respondent herein, the xerox copy of the written statement in the above suit filed on 5 .8.1996 by the third defendant in that suit, viz., the third revision petitioner herein, the certified copy of judgment dated 10.12.1998, which, it appears, was dismissed for default and the certified copy of the decree dated 10.12.1998 made in the above suit and the C.M.P. No.9773 of 2001 was ordered as per order of this Court dated 10.2.2004 and marked the above documents as Exs.P-15 to P-18.

8. The learned counsel for the revision petitioners contended that as per Exs.P-2 to P-10, the revision petitioners have proved that the petition premises, thatched hut, is originally belonged to C.Thomas alias C.Kothandan, the father of the revision petitioners and on his death, the revision petitioners have become the owners of the petition premises and that the first respondent herein became a tenant under the said C.Thomas alias C.Kothandan and even during the life time of C.Thomas alias C.Kothandan, the first respondent herein failed to pay the rent and after the death of C.Thomas alias C.Kothandan on 9.4.1998 also the first respondent has committed default in payment of rent wilfully from February, 1988 till September, 1988 at the rate of Rs.75/- per month.

9. The learned counsel for the revision petitioners pointed out that though in the reply notice Ex.P-14 dated 26.9.1992, a stand was taken by the first respondent herein that he is the owner of the petition premises and

enjoying the same for more than 20 years on his own, in the counter filed on 16.4.1993 in the R.C.O.P.No.2877 of 1992, it is stated that the first respondent herein put up superstructure on his own plot. The first respondent herein as R.W.1 in his evidence has taken definite stand that the site of the premises was leased out to his father R.C.Dhanapal by Govindasamy and his wife Marriammal for which a rental agreement was also executed under Ex.R-1 dated 1.1.1 964.

10. Further, the learned counsel for the revision petitioners pointed out the suit O.S.No.6832 of 1994 was filed by the first respondent herein on 6.9.1994 against the some of the revision petitioners. The xerox copy of the plaint has been marked as Ex.P-15 as per order this Court dated 10.2.2004 in C.M.P.No.9773 of 2001. In Ex.P-15, it is stated by the first respondent herein that he is in possession and enjoyment of the petition premises for more than 40 years and the superstructure of the house was constructed by him, without furnishing details as to how he became the owner of the plot in which according to him he put up superstructure and the said suit itself was filed 6.9.1994 i.e. immediately after the dismissal of R.C.O.P.No.2877 of 199 2, subject matter of this revision petition, on 31.8.1994. The learned counsel for the revision petitioners further argued that the first respondent herein allowed the said suit dismissed for default on 10 .12.1998. Further the learned counsel submitted that though the first respondent herein denied the title of the revision petitioners to the petition premises, he filed the suit O.S.No.6832 of 1994 only for permanent injunction that his possession should not be disturbed and without seeking declaration. Therefore, according to the learned counsel for the revision petitioners, inasmuch as the revision petitioners have proved that the petition premises originally belonged to C. Thomas alias C.Kothandan, the father of the revision petitioners, in which admittedly, the first respondent herein is in possession and in view of the defence taken by the first respondent herein that his father Dhanapal became a tenant in respect of the site under one Govindasamy and his wife Marriammal under Ex.R-1 and in which his father had put up the petition thatched hut and the same has not been proved, the first respondent herein, is to be evicted on the ground of denial of title and that he has committed default in payment of rent from February, 1998 till the date of filing of the Rent Control Original petition and also the requirement of the petition premises for own use and occupation by the revision petitioners is bona fide, in that the adjacent premises in which they have been residing, is not sufficient.

11. The learned counsel for the first respondent herein contended that inasmuch as the petition premises is Natham Poromboke, the revision petitioners or their father C.Thomas alias C.Kothandan cannot claim title to the same and in any event, the revision petitioners have not proved that the petition premises originally belonged to C.Thomas alias C.Kothandan and on his death, the revision petitioners have become the owners and that they also failed to establish that the first respondent herein is a tenant in respect of the said premises on a monthly rent of Rs.75/-. The learned counsel further submitted that as per Ex.R-1 dated 1.1.1964, the rental agreement, one Govindasamy and his wife Marriammal leased the site to the first respondent's father Dhanapal in which he had constructed, the thatched hut and have been residing with his family and on his death, the first respondent herein is

residing with his family in his own right and as such, now the first respondent has established his case and on that aspect, the revision petitioners are not entitled for eviction on all the three grounds sought for.

12. The petition premises is described as thatched hut at No.3, Narayana Maistry First Street (now Second Street), villivakkam, Madras 4 9. Under Ex.P-2 notice was issued to Kothandan to appear on 22.11.19 91 before the Special Officer, City Measurement Final Audit(efu msit ,Wjp jzpf;if), North Chennai, Purasai, Perambur Taluk Office, Chennai 34, with the property tax receipts and the receipts for payment of urban land tax in respect of the years 1989-90 and other documents relating to the property. Ex.P-3 series is the house tax receipts issued to Kothandan in respect of the premises, 3 Narayana Maistry Street for the years 1966 to 1970. Ex.P-4 series is the property tax demand notice issued to Kothandan for the said property for the first and second half years 1988-89 and 1990-91. Ex.P-5 is the property tax demand card issued to Kothandan. Ex.P-6 is the proceedings dated 23.7.1981 informing the said Kothandan that assessment orders have been passed in respect of the urban land tax and t hat an appeal can be preferred before the Urban Land Tax Tribunal relating to the petition property. Ex.P-7 is the order of the Assistant Commissioner of Urban Land Tax dated 13.10.1980. Ex.P-8 is receipt for payment of urban land tax dated 28.12.1982 issued to Kothandan. Ex.P-9 is the demand notice for urban land tax issued to Kothandan. Ex.P-10 is the receipt for payment of urban land tax dated 9.9.1992 issued to Kothandan. Therefore, it is clear from Exs.P-2 to P-10 that the said Kothandan is the owner of the petition premises, viz., thatched hut bearing No.3, Narayana Maistry First Street (now Second Street), Villivakkam, Chennai 49.

13. As against such evidence produced by the revision petitioners, the first respondent herein marked lease agreement Ex.R-1 dated 1.1.1964 said to have been executed by one Govindasamy and his wife Marriammal in favour of his father R.C.Dhanapal, as per which vacant site has been leased to the said Govindasamy and his wife and that they had to put up thatched hut in the site. In the reply notice Ex.P-14 dated 26.9.1992, it is claimed by the first respondent herein that he is the owner of the petition premises and he is enjoying it for more than 20 years on his own. No further particulars have been furnished in the notice. In the counter filed on 16.4.1993 in the Rent Control Original Petition, it is only set out that there is no landlords and tenant relationship between the revision petitioners and two others and the first respondent herein. It is further claimed in the counter that the first respondent herein put up the superstructure in his own right on his plot. In the reply notice Ex.P-14 dated 26.9.1992 and in the counter also it was not stated how the first respondent herein and his father Dhanapal came into possession of the petition premises as to whether his father became a tenant in respect of the site and that he had put up the superstructure. But, however in his evidence as R.W.1, the first respondent herein has stated that his father Dhanapal became a tenant in respect of the site under one Govindasamy and his wife Marriammal for the first time, despite the fact in Ex.R-1 dated 1.1.1964, in the reply notice Ex.P-14 dated 26.9.1992 and in the counter filed on 16.4.1993, no mention is made about the said agreement. Even the said agreement Ex.R-1 has not been proved by the first respondent herein

and it is unregistered. Further, it is also not proved by the first respondent herein as to how Govindasamy and his wife Marriammal were the owners of the said vacant site. Further, no value can be attached to Ex.R-2, the patta said to have been issued to the first respondent herein by the special Tahsildar (Assignment), Saidapet dated 9.7.1979 in resepct of Survey No.348/1A Konnur village for 3 cents, in that it is not proved that it relates to the petition premises and further it is not stated in the reply notice Ex.P-14 dated 26.9.1992 and also in the counter filed on 16.4.1993 that such patta was issued in respect of the petition premises to the first respondent herein. Further, merely because, in Ex.R-3 dated 7.12 .1925 and in Ex.R-4 dated 5.10.1946, the southern boundary is mentioned as that of the vacant site of the father of the first respondent herein, it cannot be said that the site of the petition premises belonged to Dhanapal, the father of the first respondent herein. Admittedly, it is not the case of the first respondent herein that the vacant site of the petition premises belonged to his father Dhanapal since it is seen from Ex.R-1, in that Govindasamy and his wife executed the lease agreement in favour of Dhanapal, the father of the first respondent herein in which Govindasamy and his wife Marriammal agreed to put up hut. Therefore, the first respondent has not proved that vacant site of the petition premises belonged to his father Dhanapal and that either his father Dhanapal or the first respondent herein put up the thatched hut in the petition premises.

14. At the same time the revision petitioners have clearly proved by marking Exs.P-2 to P-10 that the petition premises originally belonged to C.Thomas alias C.Kothandan, the father of the revision petitioners and it is he who paid the property tax for the property and as such, it is clear that their father C.Thomas alias C.Kothandan was the owner of the property and on his death the revision petitioners have become the owners of the petition premises and the first respondent herein became the tenant under C.Thomas alias C.Kothandan and on his death under the revision petitioners on a monthly rent of Rs.75/-.

15. The first respondent herein denied the title to the revision petitioners without bona fide and also has not paid the rent for a period from February, 1988 to September, 1992 which is to be construed as wilful.

16. As regards the petition premises required for own use and occupation by the revision petitioners, such case has been proved through P.W.1, who clearly deposed that the adjacent premises, consisting of one room, in which they are residing, is not sufficient and as such, the revision petitioners are entitled for eviction of the first respondent herein from the petition premises on the ground of additional accommodation through requirement sought on the ground of owner's occupation and also on the other two grounds. The learned Rent Control Appellate Authority has not considered all these aspects and therefore, the dismissal of the Rent Control Original Petition by allowing the Rent Control Appeal reversing the order of eviction made by the learned Rent Controller on all the three grounds is improper and as such, the said order is to be set aside.

17. In the result, this Civil Revision Petition is allowed with cost

setting aside the judgment and decree dated 17.3.1998 made by the learned Rent Control Appellate Authority in R.C.A.No.924 of 1994 and restoring the order of eviction dated 31.8.1994 made by the learned Rent Controller in R.C.O.P.No.2877 of 1992.

Index :Yes.
Internet:Yes.

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To

1) The Registrar,
Small Causes Court,
Madras.

2) The Section Officer,
V.R. Section,
High Court,
Madras.